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PRACTITIONER TO ACADEMIC: A REFLECTIVE AND PERSONAL ACCOUNT

Luke Fisher¹

A Late Beginner?

I started my first university course in York in 1999. I studied psychology, briefly, and ultimately dropped out at Christmas.... It wasn't that Uni wasn't for me - quite the opposite. I continued where I'd left off from my Sixth-Form college, I had left an all boys' public school and so spent far too much time worrying about my inept interactions with the fairer sex! There was never any question that I wouldn't go back, I just needed to deal with some things (teenage angst and the conviction I was the only one experiencing it) and find the right course at the right institution. The following summer I pulled out one of my dad's complete road maps of Great Britain (long before easy access to the internet) and started scouring the south coast for a university town as far away from my home town as was humanly possible. I refused to look north - it's cold up there, and Plymouth, a full 270 miles away from Nottingham, seemed like just the place. I originally applied for three courses: Marine Science, Ocean Science and Sociology with Criminal Justice but ultimately selected the social science option as I felt I was clearly more suited to being a philosopher than a scientist.

My degree evolved quickly through Criminal Justice with Sociology, Criminal Justice with Politics, Politics with Criminal Justice, to just Politics and I particularly enjoyed discussing International Political Economy and Harry Potter in a local establishment that specialised in the imbibing of alcoholic liquor. I found Plymouth University to be warm, welcoming, and supportive. There are so many opportunities to broaden one's experience and many students have themselves through the enterprising and nurturing attitude that pervades certainly all the faculties I have had the benefit of getting to know. There had always been talk of my inevitable

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turn to the law, from being a toddler it was a given that I would either follow in my mother's footsteps and become an actor (darling? me?) or qualify as a lawyer. But I did not feel confident enough to undertake an LLB especially as it seemed like a lot of hard work and I was self-aware enough to know I lack(ed) the maturity to put in the hard work that was/is deservedly necessary. [Aside: this is a decision I regret as lawyers at least five years younger than me are now achieving partnership status]. So I returned to the University in 2007 to undertake the Graduate Diploma in Law having acknowledged that no matter how good I was at it, the alternative of Sales and Marketing was not a real job.

I was originally determined to qualify at the Bar, advocacy is as much a performance as acting on stage, just with harder to follow soliloquies. However, this ambition died an ignominious death following a visit to the Inns of Court where I realised that the self-imposed competitive element would be counter-productive creating such an atmosphere of inhuman back-biting that I almost started up a duelling club in the hope that I could simultaneously provide relief to my contemporaries whilst also whittling down the competition. Seven years later and Plymouth University was still buzzing with the same positive can-do attitude I recalled from my undergraduate days, and the law faculty was dynamic with the right amount of experience and chutzpah to stimulate and challenge all manner of students.

I completed the LPC and was lucky enough to achieve a training contract at the only firm I was really interested in working for, a relatively small, legal aid, high street firm with just four partners. I owe the introduction to one of the law lecturers, a typical example of the positive relationship the school has cultivated with local firms. There was a personal touch about the way they ran their business and represented their clients that appealed to me immediately. I had already decided that there was no way I was going to use my new-found powers in the corporate world whilst the more vulnerable in society floundered with insufficient help, support, and representation. It is true to say that, historically, our state funded legal aid system founded with the Legal Aid and Advice Act 1949 was the envy of the developed world. Sadly, with the enactment of the highly controversial Legal Aid, Sentencing and Punishment of Offenders Act 2012 this is no longer the case.

‘Couples and Kids’: A Family Lawyer is Born

My first seat was in Criminal Law and I quickly started representing clients during police interview. To this day the ‘Reps Room’ at Charles Cross Police Station, Plymouth, is one of my favourite places, the banter between lawyers and the police was mutually cathartic and appealed to my dark sense of humour - if you didn't laugh in that place, you would cry. And to all of those who are dubious about police station reps and ‘no comment’ advocates, rest assured, the vast majority of the time the evidence was conclusive and the advice, to all bar

the most experienced and cynical lags, was 'admit it, they've got the whole thing on candid camera.' Busy police station custody suites are also largely filled with some of the most dedicated lawyers and police staff you will find, it is far from an easy way to make a living yet seems to appeal to the most talented in the professions. A huge amount of societal positivity can be generated in that environment between two opposing and disparate advocates. Sadly, this six month attachment ended far too soon and, with very little experience of advocacy in the Magistrates' (which I will always regret as this is where the best advocates cut their teeth) I found myself in the family department. I had hated family law whilst studying it on the LPC, and was acutely aware that most of the criminal barristers I looked up to as the epitome of legal aid cool, referred to their family counterparts as 'noddies' because of the constant need to provide a sympathetic ear to their clients - though this was not meant derogatorily. It became immediately apparent to everyone, including me, that whether I liked it or not, I was a family lawyer and as soon as I realised it, I was thrilled. I say to most of the students I come across that there are so many areas of law and different practices, that it is often as important to learn what you do not want to do, as much as looking for what you do, and I was overjoyed that I found my niche so quickly.

I appreciate all lawyers think their area of law is the most important but with family law it is actually true. The two biggest areas of family law are 'Couples and Kids' both of which are arguably the most emotional, and consequently irrational, areas of our lives, professionals can quite easily resolve complex matters of the heart that the individuals concerned will never be able to rationalise effectively. I have learnt from experience that this is often the case with the most privileged and educated in society, let alone the vulnerable and left-behind who may not have the education to even decipher court applications let alone conduct legal proceedings with any efficacy. Frustration, and consequential acrimony, is rife, and, arguably, will continue to be as long as human beings are expected to resolve their own emotional problems without professional assistance. This is the current situation more often than not, due to the huge swathes recent successive governments have cut through our legal aid provision (incidentally many people seem to think this was started as part of the Tories' austerity measures but it was actually Blair and Brown's Labour government that took the first swing with the axe, Gove et al just depressingly just cut harder on realizing their inherited good fortune).

The job was amazing. Anywhere outside of London may be seen as 'provincial' by the City legal circles but it attracts a different kind of lawyer. Plymouth might be a city but it is a small place to practise law which means that we all know the local judges and other professionals very well. This translates into two clear advantages for our clients: firstly, there is no room for lawyers' egos to get in the way of their clients' cases and best interests. If at any point I try

and 'grandstand' then my opposition, who I have worked with to effectively resolve many previous cases, and was probably drinking with at the weekend, is going to tell me to 'pull the other one!' and 'get over myself. We with then sit down and if at all possible negotiate a solution that is mutually beneficial to both our clients, their bank balances, and most importantly, their children. The second advantage is that we can properly, thoroughly, and accurately advise our client in terms of the actual judge and professionals involved. Any lawyer who has had cases across different parts of the country knows that different courts and judges interact with different social workers and CAFCASS officers, despite the welfare checklist of the child being paramount across the board this can mean vary significantly. In the larger practice areas, obtaining the right result can take that little bit longer and costs that little bit more whereas a small pool of players builds efficiencies into the process advantaging our clients. I trust the passion I had for the work and my job come across in the way I write the above because just how happy I was in my work was important to what came next.

When I started dealing with the Legal Aid Agency (LAA) I got the distinct impression they were there to help and whilst some of the procedures were onerous, there was some method to the madness with them seeming to work with us rather than against us. We would get the odd claim rejected but this was usually resolvable with minimal fuss. But slowly, and in line with government narrative and swingeing cuts, dealing with the LAA became more and more difficult. At first they started rejecting claims that would have previously been paid and were clearly in line with guidance. We would have to put time and effort into appealing such rejections but were almost always successful. Of course we were not paid for the time it took to make these appeals. The next stage was that the appeal process stopped working. The goalposts were moved with the profession always one step behind. Frustration levels were rising. We now had to get judges to sign forms confirming we had attended hearings. All solicitors and barristers in this jurisdiction are Officers of the Court of England and Wales and yet we had to account for when and how long we spent at court. This was also alongside fee cuts that have seen the fixed fee for an entire Legal Help divorce reach the life-changing amount of £86.40.

Running Plymouth's Family Law Clinic

Over the last year of my practice, dealing with the LAA became such a soul-destroying, depressing, and ineffective activity that I was disincentivised. The government imposed strict criteria yet appropriate applications were constantly delayed and rejected and we found ourselves justifying every single aspect of claims on the public purse. If only politicians' expenses, familial gratuities, and tax affairs were as equally well-scrutinised.... I was lucky to be given an out. Two-and-a-half years ago I was asked to assist in setting up the Family Law

Clinic in the Plymouth Law School as the Supervising Solicitor. This was brilliant! Whilst I could not represent clinic clients in court I could essentially provide advice, albeit indirectly, for free! I could also share my knowledge and experience of how the local courts dealt with particular types of cases, allowing me to easily reassure those facing it all on their own that the processes and professionals in place were there to help. At the same time I could help the next generation of lawyers to see and understand the importance of providing good legal advice and assistance to normal people, like ourselves, without having to ask for money or deal with a governmental organisation which appears, in my personal opinion, to be incentivised for not doing what it was set up to do. So I hung up my lawyer's spurs and picked up my 'mortar board', thrusting myself in to a whole new discipline: teaching, and I had to work to a very different set of responsibilities. I also had to contend with myself. This new role wasn't about me and my love of law and the kick I got out of helping people. It was an educational project and my duties were solely towards the students. I had to inspire and inform, and hopefully instil the same passion and commitment to access to justice and the importance of first helping those who cannot help themselves, and to take such inspiration from it, as I had.

Pedagogic research is fascinating but a very different animal to law, with a strong focus on reflective practice, rather than rote-learning or one governed by a set of rules. Plymouth University has a policy that all its educators must be appropriately qualified and so completion of the Postgraduate Certificate in Academic Practice is compulsory to learn what is needed to facilitate the learning culture favoured here. Thinking about the best way to deliver a lecture is not that different from considering the best way to present a case but I have learnt that the courts are far more forgiving than the students. They say the secret to good advocacy is preparation. That is all well and good when you have the time and resources to prep a case as well as you would like. However, such time is rarely available to a legal aid childcare solicitor with a huge case-load who still has to be ready for ex parte or short notice applications, let alone the odd Emergency Protection Order application thrown in for good measure. The fact is the best lawyers in this area are those who can think on their feet and juggle multiple cases at a time with very little preparation. It has become my fast-learned experience that students are far less merciful than judges and consequently it seems the life of even a part-time law lecturer is infinitely busier than that of a full time legal aid family solicitor. Students seem to smell the blood in the water when you either do not know the answer to their question or try and pass off an ill-considered response. Perhaps judges are too professional and polite to do likewise.

The upside is I have had to take the time to really look at the law again. It is probably fair to say that most conscientious practitioners (certainly many of my contemporaries), bemoan the lack of time they have to prepare and that they are not always fully up to speed on the latest

case or guidance. This is usually what creates lawyers in the first place - a genuine fascination with, and enjoyment in studying, the law, and I would recommend to all my former colleagues to find the time to analyse the latest caselaw and commentary to reinvigorate your knowledge and practice and perhaps dust away some of the inevitable complacent cobwebs. I now have my first full semester under my belt, and whilst my head is spinning, and my Christmas and New Year are due to be spent writing well over a dozen lectures for the next term, I am finding teaching the students and discussing the clinic clients is at least as stimulating as the actual practice. Seeing the students apply the academic law they are studying immediately to real-life people and watching them ascertain the huge benefit just a little bit of actual knowledge can provide to those facing court without a lawyer brings the process full circle.

The University Law Clinic model is growing and whilst there are already over a dozen universities providing such clinical education and advice to their local constituents, and notwithstanding the huge benefits this brings to students and citizens alike, it is no substitute for proper qualified representation. Recent statistics taken from the Magistrates' Courts record that up to 68% of family applicants are litigants in person and the government must either soon accept that their cost-saving austerity exercise is a false economy, or just admit that they no longer consider access to justice a fundamental tenet of a modern democracy. My concern is they will keep quiet on the matter but look to university law clinics to pick up some of the slack. That would explain, at least in part, the changes to legal qualification just over the horizon. In any event it does not matter which way you look at it - the justice system is currently only working because of the dedication of the practitioners at the coalface and the educators inspiring the next generation and every citizen should be very grateful for this. Sadly, not everyone is so supportive - the clinic has already had one 'cease and desist' letter from a family law firm who seems to resent us for undermining their business.

The new qualification route is due to come into force in 2020 and the second tier, the SQE2, will have a practical element. This seems to be the perfect role for a University Law Clinic and perhaps through the Alternate Business Structure model that is now available, setting up the clinic as a pro bono firm is something to be investigated. When Justice Minister, Michael Gove suggested that mandatory pro bono work could address the deficits in legal aid, something that is already compulsory for law students wishing to qualify in New York who are expected to have undertaken at least 50 hours of pro bono work.² I passionately believe that with the

² Alice Haynes, 'Legal Aid Cuts: A Future of Mandatory Pro Bono Work?' <https://rightsinfo.org/legal-aid-cuts-future-mandatory-pro-bono-work/> (23 November 2017)>

support of the local firms and Plymouth Law Society, a university law clinic can be uniquely placed to serve the local community, the students, and the rule of law bringing about positive outcomes for all involved by inspiring, training, and ultimately facilitating, the next generation of legal aid lawyers.

The Family Law Clinic at Plymouth University provides free advice and assistance in respect to children and matrimonial law matters. It can be reached via 01752 585502, or familylawclinic@plymouth.ac.uk.